REMARKS

Claims 1-21 were presented for examination. Claims 1-21 were rejected.

Claims

Claim 21 was rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Further, the Office stated there was no antecedent basis for the "said annuity" or "said insurance policy" in claim 21 or claim 19 from which it depended and for examination purposes, it was assumed that claim 21 was intended to depend from claim 20 instead which contains both the annuity and insurance policy. In response, claim 21 has been amended to provide antecedent basis. Therefore, claim 21 should be in allowable form.

Claims 8-21 were provisionally rejected on the ground of nonstatutory double patenting as being unpatenable over claims 7-20 of U.S. Patent Application No. 10/519,179 which appeared to be identical. Claim 2 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent Application No. 10/519,179. In response, Applicant will provide a terminal disclaimer for this application to terminate with U.S. Patent Application No. 10/519,179. Therefore, claims 8-21 should be in allowable form.

Claims 1-21 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,852,811 to Atkins. In response, the Office's citation of Atkins is not as set out in 8d of the Office Action but has different characteristics from 8d of the claim in Atkins, Col. 5, lines 23-29. The same is true for step (f) and (h) of claim 1. The key is in the successful borrowing using the investment vehicle as set out in the claims of applicant's invention.

The rejections of claim 1 by the Office cites eight descriptors of the Atkins patent. In summary, the objection centers on Atkins' reference to borrowing money to invest, and that the Atkins invention, though it does not explicitly teach borrowing more than the amount needed to buy the real estate, it "was made to borrow additional funds to invest in investment vehicles in addition to the real estate".

The assertion that it would be "obvious to a person of ordinary skill in the art at the time the invention was made to borrow additional funds to invest in investment vehicles in addition to the Real Estate" is not accurate. While one could borrow money for any purpose, the fact that one is borrowing to invest is not the underlying principal of the Atkins invention, or the MANA Loan. Nor is the fact that the borrowing is occurring coincidental to the mortgage transaction.

Home buyers do not mix the home purchase or mortgage transaction with their investing plans, and lenders have never introduced a product designed to integrate a mortgage loan and an investment vehicle due both to various tax laws, and to the reality of the mortgage finance system. Mortgage lending is a silo operation in most banks, and even if the mortgage-lending group is not an independent entity, the investment group is – in every bank.

Fundamental differences in their funding, cost of funds, securitization, risk management, hedging, and operations, make such integration very difficult. In addition, these two units operate as completely separate entities, thus the creation of products that span the two entities has never occurred because the units do not cooperate. In addition, even if such integration occurred, their distribution channels would not be suitably licensed to sell both mortgage loans and investment products.

There are loose affiliations of mortgage and investment products, and this is the underlying construct of Atkins. However, even in Atkins, the borrower does not "borrow additional funds to invest." In Atkins, the borrower simply makes the same down payment they would have, but in Atkins that down payment amount is invested in the investment vehicle. There is no additional borrowing. At no time is the borrowed amount in excess of the value of the home, or is in equal to the collateral value – it is always some fraction of the collateral value, usually 80%. There must be a down payment by the borrower, because it is that down payment that is placed into the investment vehicle. Without a down-payment, no funds are available for investment.

In the MANA Loan, no down payment is required, though a down payment may be made, and may be required if the borrowers' credit risk requires it. A borrower may put zero down, and over fund the mortgage loan by 20% over the value of the home. This has never been conceived or allowed in a mortgage loan.

Buyers view the traditional mortgage loan as a necessary evil, and it is obtained as a unique transaction, unrelated to any other loan or investment. While over the years various institutions have introduced products that employ cross-collateralization, the uniqueness of the MANA Loan is that it fully integrates the investment vehicle and the mortgage loan. The loan is not simply cross-collateralized with an investment. Cross-collateralization could be offered against an automobile, or jewelry, or stocks, or raw land, or another house. Atkins simply allows the down payment to be placed into an investment that is offered as additional security. This is no different than if the homebuyer obtained a higher than 80% loan amount, and placed the money they would have put down on the house, into an investment vehicle themselves, and then offered that investment or any other investment as additional collateral.

In the MANA Loan, the investment vehicle is a part of the mortgage package. This structure cannot be replicated by the homeowner or by another mortgage lender or investment firm. The MANA Loan allows the borrower to borrow up to 100% of the home purchase price or value, plus an additional 20% of the purchase price or value for the express purpose of creating an investment fund. The Atkins product requires a 20% down payment and the use of the 20% down payment to create an investment fund. A borrower can obtain an 80% loan from any lender. They need not place their down payment into the investment fund. A borrower cannot obtain a 120%, with a zero money down-payment from any lender.

The Atkins invention will always have a loan-to-collateral value of less than or equal to 80%, and most borrowers could replicate this structure easily by securing a 100% loan and putting their down payment into some other investment. Unless their poor credit required it, they would not even need to pledge that investment against their 100% mortgage loan. There is no observed benefit of using the Atkins product rather than replicating it one's self. In fact, replicating the structure gives the borrower a greater array of investment opportunities, eliminates the requirement to pledge it as additional security, and gives the borrower greater unrestricted access to the investment funds, without conditions.

The MANA Loan cannot be replicated. A borrower may be able to borrow 100% of the loan amount. However, if they do not have the funds for a down-payment, they will certainly not have the funds to invest. By definition, the Atkins borrower has the financial capacity to place a large down-payment on a loan (at least 20%). They thus, by definition, have greater liquid assets, and therefore greater options. They can invest with Atkins, simply place the entire down payment into the house purchase, or borrow a higher dollar amount and independently invest the amount they would have paid down.

The MANA Loan borrower need not have any liquidity, or at least they need have only minimal liquid assets. They can both borrow 100% of the home purchase price, and borrow 100% of the investment funds. This structure is unique and cannot be replicated on ones' own, or through any combination of other products on the market. This design in neither "obvious" or even "possible" outside of the claimed MANA Loan. Therefore, claim 1 should be in allowable form.

Regarding claim 2, making a loan with a specific term is simply a definition of the product. It is not a uniqueness of the invention of claim 2, but an element of it. It is like saying that a radical new, zero emission, high MPG vehicle is not unique because it has wheel and an engine, and all cars have that. If the Office's point is that the product is not unique because part of the definition is that it is a loan with a specified term ... well, that would mean that no product that incorporates any basic element of any invention that preceded it, would be unique enough to patent. This is not the case by law and claim 2 should be in allowable form.

Regarding claim 3, it is common in financial services to cross-collateralize, as previously discussed. The only uniqueness is the fact that Atkins integrates the management of disparate financial products (mortgage and investment vehicle). Atkins refers to the product, or more accurately, the personal financial management construct, as the Home Owner's Managed Equity (HOME) account. As discussed above, it requires that there be **equity**, and in fact, a significant amount of equity. The SUMMARY OF THE INVENTION in the Atkins patent defines this as a "prioritization function". It is designed and intended to be an actively managed investment portfolio that allows the mortgage loan to factored in to the clients' overall financial goals and objectives – which is usually not the way a borrower views or treats the mortgage. Within Atkins, the investments and mortgage are tracked and managed, but they are separate and disparate products.

Their "function" suggests investments and credit facilities based on the clients' investing goals and objectives. The borrower must have liquidity.

Atkins is not a product; it is an approach to integrating, at the personal balance sheet level, all of an individual's investments and debts, and managing them as an optimized portfolio, all managed by an investment firm. While the stated goal is to make "better housing affordable to a greater number of individuals", the product is not targeted at the struggling homebuyer, but at the home-buyer with significant investable assets. The real goal of such programs, and there have been many, is to maximize the loan amount so the bank can charge a higher rate of interest for a higher loan-to-value, and still have the maximum amount of investable assets under management from which to generate the maximum fees for account management and trading.

If a buyer purchases a $1MM home and put 20% down, the bank may originate an $800,000 loan at 7%. If the bank can sell the home-buyer on the Atkins concept, that bank can originate a $1MM loan at 6.25 – 6.5%, and gain $200,000 in assets under management. While there is some benefit to the borrower in this "Current Account" style mortgage, the greater benefit is to the bank, and the product is never targeted at clients without significant investable assets – they would not qualify as they have little funds available for a down payment.

The MANA Loan combines specific and distinct financial investment products with the mortgage loan, making them a single, non-replicatable, and non-separable product. This is not cross-collateralization, it is the creation of a single product, made up of a loan in an amount up to 20% more than the value of the home, and without consideration for any of the borrowers other investments or loan facilities. This is not an active managed account, it is not optimized, and the use and investment is not at the discretion or whim of the borrower. The MANA Loan is intended to help those who could never qualify for an Atkins-style personal financial management program, as

well as those who could. It is a passive, rather than active, investment approach. It is a risk-free investment, whereas the Atkins program optimizes the portfolio for risk and return based on the established objectives of each individual borrower. The MANA Loan is a 'one-size fits all' product. It is not intended to be a tool to manage all of an individual's assets, nor is it designed to allow for risky investments or portfolio reallocation.

More importantly, the MANA Loan is essentially a forced savings program for those who have not been able to, due to financial hardship or poor financial management habit's, save for retirement, or even to purchase a home. It is intended to create an immediate savings account that can be accessed in the event of a financial emergency, whereas the Atkins client already has this liquidity. Because the MANA Loan is a single integrated product, it is managed as such, and the borrower may use the investment vehicle as a financial resource, only for the purpose of subsidizing their mortgage payment during times of proven and documented financial hardship.

The MANA Loan is intended to give those without the savings or assets an opportunity to both purchase a home, and create an emergency fund and the beginnings of a retirement plan. It also incorporates a required life insurance component thus protecting the family from financial disaster in the event of the untimely and unexpected death of one of the borrowers. Therefore, claim 3 should be in allowable form.

With regard to claim 5, there is the uniqueness of the MANA Loan that it is not cross collateralized. The annuity, insurance and mortgage represent a single product, all of which are pledged as non-separable collateral. Therefore, claim 5 should be in allowable form.

Regarding claim 7, Atkins is not designed to allow for automatic payments from an asset account when "unable to make said periodic payment". At no time is the individual's ability to make the payment mentioned. This function is simply the ability of the borrower to create an automatic transfer, or automatic transfer with verification, from any of the borrower's asset accounts. This is no different than current electronic banking auto-debits or EFT (electronic funds transfers). It is not unique; it is simply a feature of the managed portfolio. I can have my Bank of America mortgage paid automatically each month from my checking account, and my bank account has an overdraft linked to my BofA VISA card.

The mention of ability to pay is independent of this transfer capability. The invention states that "Upon the collection or failure to receive the required funds, updated reports are issued to the client data file". A collateral agreement does not allow a lender to draw from a secured asset simply for the purpose of making a scheduled periodic payment. The collateral can only be used in the event of default, and then usually only after a long foreclosure process as outlined by the laws of the state in which the house is situated. If this ability were automatic, and possible without either the borrower's instructions or permission, there would never be a situation in which there was a "failure to receive the required funds".

The asset collateral requirements ensure that there are sufficient assets to maintain the low overall loan-to-value ratio, so it is not possible for there to be insufficient funds available in the asset accounts to meet the periodic payment requirement. Thus the only way a "failure to receive the required funds" would occur, is if the borrower did not make the payment and had not arranged, voluntarily, for the amount to be drafted from an asset or credit account under management. The asset accounts of Atkins are collateral, but they are not part of the product and therefore they cannot

be automatically debited for the periodic payment unless the borrower establishes that option. Therefore, claim 7 should be in allowable form.

Regarding claim 8, these elements are not obvious; they have never been done, and is not being done as part of Atkins. They are not borrowing an amount greater than the value of the house. No lender has ever made home loans for people to use the proceeds for investment. It is prohibited by lenders and by tax law, so it is not at all clear that this should have been obvious to a person of ordinary skill in this art.

In addition, even if it occurred to someone to provide payment to an investment entity at the time of closing, it does not happen. There has never been a product that allowed people to borrow money from their home specifically for investment purposes. Banks view this as too risky, and the IRS has disallowed it. If such investments were allowed, they would be restricted to very safe and low risk investments, whereas Atkins allows investments in all kinds of risky and low risk investments because the money used is not additional funds borrower for that purpose, but the down-payment that would otherwise have reduced the loan amount. The borrower is using its own money and simply getting a larger mortgage loan, as a percentage of the purchase price. This can be done without the Atkins program, and because it is the borrowers own money, the use as investment funds is permitted.

The MANA Loan requires no down payment and yet still provides sufficient funds to both purchase the home and fund a secure, risk-free investment. Even if this was contemplated, it has never been done and the prior art leads away from it. It is not reasonable to believe that a person of ordinary, or even extraordinary, skill in this art would conceive of this, and even if they had, there was no opportunity to do so. It would have been a wish, not a reality. If this practice ***is*** in fact ordinary we would request at least a dozen examples of such simultaneous closing, funding and

investment in the US over the last 25 years. This fact would be displayed on the HUD-1 Settlement Statement and the data provided to the Commerce Department and the Federal Reserve.

The basic contention by the Office here is speculation. It is clearly based on hindsight, an opinion formed by reading the various related patent documents and the MANA Loan patent application. The only transactions lenders have allowed are the use of other assets as collateral, in order to reduce the amount of down payment required so that the down payment could be invested with greater efficiency. Basic finance tells us that if you purchase a home for $1MM and you put 50% down, and if the property appreciates at 10% per year, then after one year you have a $100,000 gain on a $500,000 investment. However, since the $100,000 gain would have been realized regardless of the amount of the down payment, one could have put $0 into the property and still received a $100,000 return, which is now an infinite return.

Therefore, financially it would make sense, depending on tax rates and borrowing costs, to consider using the down-payment funds elsewhere where they can be more efficient. If one puts the $500,000 down payment into the stock market and receive an average 11.4% return, one will make 11.4%, but one will pay about 7% interest on the $500,000 of additional loan proceeds, so the net gain is 4.4%. This is the financial strategy of Atkins. It is a system of performance optimization and tax arbitrage. Therefore, claim 8 should be in allowable form.

Regarding claim 10, this restatement is incomplete. There must always be assets greater than some minimum standard or minimum borrowing power. The asset value must be monitored and constantly multiplied by the allowed loan-to-value ratio. If the value of the collateral falls below this threshold, an action similar to a margin call is triggered. The MANA Loan has no such provision, requirement or potential, as the investment is risk free and passive, and the loan to value can never go above the initial loan-to-value unless the real estate itself declines in value – which is historically

very rare, and when it does occur, it is for a limited period. Property appreciation has averaged in excess of 6%, nationally, for the last several decades, and there have only been 7 years in the last century in which housing values have declined – in contrast to the financial markets. Therefore, claim 10 should be in allowable form.

Regarding claim 12, since the Atkins borrower is putting up at least 20% in down payment, it is unlikely they will be rejected unless their credit is seriously damaged. A 20% down payment diverted to an investment account would leave the financial institution with, at most, an 83% loan-to-value. The MANA Loan would yield a 100%, or thereabout, loan-to-value. Column 27, lines 23-35 describe the many cross collateralization options of the Atkins program. They are not part of the product, simply additional pledged security. Both the Atkins and MANA Loan programs require the submission to an approval process, as does every other loan made in the world. The approval process and requirements however change with the MANA Loan. They must be more closely scrutinized because the loan-to-value is 120%. They must be submitted to a mortgage insurance company for mortgage insurance (default) coverage. They must be submitted to the insurance carrier for the life insurance product approval. Only the loan program approval is similar to Atkins, and even so, the criteria and steps required vary dramatically between the 120% LTV MANA Loan to an asset poor borrower, and the 80% LTV loan made to an asset rich borrower. Therefore, claim 12 should be in allowable form.

Regarding claim 14, there is no support for the obvious conclusion by the Office. Applicant believes no example can be shown, because this does not happen, and if it did, it certainly does not happen in concert with a loan closing, and even if it did, the funds invested would always be less than or equal to the cash down payment made by the borrower, so that the borrower is in fact providing the funds. It could just as easily happen in reverse. A borrower could purchase a home

and put 20% down. They could then open a trading account and obtain a 50% margin account of $200,000, using the equity in their home as collateral. Thus they buy a $1MM home and put $200,000 down. They now have an $800,000 mortgage and $200,000 in equity.

They then open an investment account on 50% margin for $200,000. They need to put up 50% of that amount, or $100,000. They can probably open the margin account on credit, but if the investment firm required an asset, they could pledge their house for 50%, or $100,000. They now have $100,000 in equity in their house remaining, and a $200,000 trading account. As this demonstrates, the Atkins product is not unique, it is just centrally managed and cross collateralized. There are no funds borrowed from the bank to invest. At closing the bank funds the entire house purchase, and the borrower provides a check to fund the investment account instead of the mortgage down payment.

No matter what the representation, the borrower is funding their own account and borrowing more on the house to do so. Most borrowers with such liquidity and credit could probably borrow 100% of the purchase price without additional collateral, thus taking the $200,000 intended down payment and using it in any way they desire. If the borrower does not come to the closing table with the down payment, no investment fund is created, so the borrower is funding it. If they want to have the escrow agent send the funds to the investment firm, that is simply a procedural matter. They can also have the closing agent send a check to pay off the Sears bill and the car loan, but those actions are not a part of the definition of any of the products involved. Therefore, claim 14 should be in allowable form.

Regarding claim 17, as stated above, this is not a list of the product attributes. It is simply a list of acceptable collateral. The MANA Loan does not use the over-funded loan amount that is invested as simply collateral. There is no option to choose from dozens of products. The Atkins program is simply using the investment that is completely independent of the actual mortgage, as additional collateral. While they specified certain acceptable products, the list is essentially exhaustive, making it clear that the borrower can invest any way they desire, in "any financial security investment". All the Atkins program seeks is sufficient collateral in a relatively liquid investment in case they need to liquidate it for recovery. The Atkins program could easily allow any asset to be used, because it is simply additional collateral. They chose these financial products because the valuation of these products, for collateral purposes, is very simple and objective, and can occur without having to liquidate them.

A second home, for example, would take far more time to appraise, would have a large subjective component to the valuation, and the true value would only be known if and when the house were sold. The choice of acceptable collateral/investment products under Atkins is large because they are all liquid, and since they are not actually part of the Atkins program, there is no limitation. Again, they are simply independent collateral, and their only relation to the mortgage loan is the fact that they are used as additional collateral to fund a higher loan-to-value mortgage loan. There is no integration of the mortgage and the investment. They are independent. It is like using Quicken to summarize and manage all of your debt and assets, and to pay bills electronically from within a single environment (and user interface). However, just because they are viewed together and aggregated graphically does not mean they are all a single product. Their management is simply aggregated to gain better control and understanding – so too is it with Atkins. And just like

Quicken, you can do it all separately; Quicken just makes it easier and more convenient. Therefore, claim 17 is now allowable,.

Regarding claim 18, as addressed earlier, Atkins 80% is a maximum. The borrower need put at least 20% down, and maintain that LTV. MANA requires little or no down-payment and funds the investment with an extra loan amount 20% above the home purchase price. The MANA Loan is significant advantages, especially in that the borrower need not have large stock piles of cash, assets or equity to purchase a home or start an investment fund. The specific 20% used is a design choice, but a very deliberate one. It considers the effect of the increased (excess) loan amount on the risk, the increase periodic mortgage payment required when adding 20% to the base loan amount, the cost of insurance in an amount equal to the total loan amount, and the longer-term accumulation of retirement assets. If the amount exceeded 20%, the periodic payment would increase to the point where the borrowers' buying power would be greatly reduced. Thus many buyers would opt to purchase a larger more expensive home, stretching their budget beyond financial health, and left with no emergency fund should a financial setback occur – essentially what has happened with millions of homeowners over the last 6-7 years. This is exactly the scenario sought by the invention to help consumers avoid.

An amount less than 20% provides insufficient funds to grow the retirement / investment account and maintain the insurance coverage without requiring additional premium contributions beyond the initial single-pay premium. 15%, for example, would require that the borrower begin to make investment premium payments at a certain age because the initial single-premium was too small to fully fund the product. Therefore, claim 18 should now be in allowable form.

Regarding claim 19, this point has been made repeatedly. The obvious nature of borrowing money to invest, and doing so as defined and described by the MANA Loan are two completely different things. When people do borrow against their home to invest, they do so from equity. The MANA Loan has no initial equity, and none is required. The MANA Loan actually helps accelerate the creation of that equity in a risk-free manner – something most investment products do not do. Therefore, claim 19 should now be in allowable form.

Regarding claim 20, Atkins simply lists the annuity and insurance policy as options for investment, they are not part of the overall loan program, they are not required, they are not integrated, and they are not structured. The MANA Loan incorporates the Annuity and Life Insurance Policy into the MANA Loan, and in a very specific and required manner. To meet IRS requirements, $1/7^{th}$ of the investment funds are used for an initial payment toward a Universal Life Insurance policy. The remaining $6/7^{ths}$ are deposited into an annuity account. This is not intended to be an investment in an annuity and insurance policy. The annuity is a temporary vehicle to house the funds as they are being moved into the insurance policy in compliance with IRS regulations. Each anniversary year of the mortgage, for the next six years, an amount equal to $1/7^{th}$ of the original investment is transferred to the Universal Life policy – $1/7^{th}$ immediately, and $1/7^{th}$ each of the next six anniversaries. By the end of year six, the annuity is depleted and the policy is fully funded, and required no further premiums for the life of the insured.

This is not simply one of a myriad of collateral options, as it is with Atkins. This is a specific combination of products, structured in a specific way, funded with a specific amount, and integrated with the mortgage. Therefore, claim 20 should be in allowable form.

Therefore, claims 1-21 should be in allowable form.

In commenting on the references and in order to facilitate a better understanding of the differences that are expressed in the claims, certain details of distinction between same and the present invention have been mentioned, even though such differences do not appear in all of the claims. It is not intended by mentioning any such unclaimed distinctions to create any implied limitations in the claims. Not all of the distinctions between the prior art and applicant's present invention have been made by applicant. For the foregoing reasons, applicant reserves the right to submit additional evidence showing the distinction between applicant's invention to be unobvious in view of the prior art.

The foregoing remarks are intended to assist the Office in examining the application and in the course of explanation may employ shortened or more specific or variant descriptions of some of the claim language. Such descriptions are not intended to limit the scope of the claims; the actual claim language should be considered in each case. Furthermore, the remarks are not to be considered to be exhaustive of the facets of the invention which are rendered patentable, being only examples of certain advantageous features and differences which applicant's attorney chooses to mention at this time.

The Office is authorized to charge any fees due in association with this filing to the Deposit Account of Adams and Reese, LLP, Account No. 50-2413. Further, the Office is authorized to charge any other fees or credit any overpayment for this matter to the Deposit Account of Adams and Reese, LLP, Account No. 50-2413.

Reconsideration of the application as amended and allowance thereof is requested.

Please send all future correspondence regarding the above-referenced application to the undersigned at the address appearing below.

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